IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA EASTERN DIVISION

No. 4:04-CR-5-1H No. 4:05-CV-169-H

JAMES EDWARD LEONARD,)
Petitioner,)
v.)) ORDER)
UNITED STATES OF AMERICA,))
Respondent.)))

This matter is before the court on the government's motion to dismiss, filed April 10, 2006, as well as petitioner's motion for summary judgment, filed May 8, 2006. By order filed February 28, 2006, this court directed the US Attorney to file an Answer or such other appropriate response within 40 days. The government complied with the order by filing the motion to dismiss and supporting memorandum on April 10, 2006.

Petitioner, however, in his summary judgment motion, requests that the court enter judgment in his favor because the government has "defaulted to respond" as directed in the February order. Petitioner either is unaware of the motion to dismiss that was filed or misunderstands that this was an appropriate response pursuant to the court's order. Petitioner's motion is without merit, and therefore is DENIED.

However, in light of petitioner's pro se status, the

petitioner shall be given additional time to respond to the motion to dismiss, if he so desires. Therefore, the government is directed to promptly re-serve the motion to dismiss and supporting memorandum on petitioner. The government shall file an amended certificate of service showing that the motion has been properly re-served. The petitioner shall have 30 days from the date shown on the certificate of service to respond to the motion to dismiss, if he so desires. The government's motion to dismiss shall be held in abeyance pending the above time frame.

This _____ day of June, 2006.

MALCOLM J. HOWARD

Senior United States District Judge

At Greenville, NC #26